

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C.

DIRECTOR, OFFICE OF
PROFESSIONAL RESPONSIBILITY

Complainant,

v.

Complaint No. 2008-13

JENNIFER K. SUITS,

Respondent.

DECISION ON MOTION FOR DEFAULT JUDGMENT

On February 13, 2009, a Complaint was issued on behalf of the Acting Director, Office of Professional Responsibility (OPR), Internal Revenue Service, pursuant to 31 C.F.R. §10.60¹, issued under the authority of 31 U.S.C. §330, alleging that Respondent Jennifer K. Suits, an attorney engaged in practice before the Internal Revenue Service, as defined by 31 C.F.R. §10.2(d), engaged in disreputable conduct within the meaning of 31 C.F.R. §10.51 and is subject to suspension or disbarment from such practice. Specifically, it is alleged that the Respondent willfully failed to file and/or timely file a Federal individual income tax return (Form 1040) for tax years 2001, 2002, 2003, and 2004, in violation of 26 U.S.C. §§6011, 6012 and 6072.

Pursuant to 31 C.F.R. §10.62, Respondent's Answer to the complaint was due within thirty (30) calendar days from the date of the service of the complaint. The Respondent did not file an Answer to the complaint.

¹ The regulations governing the practice before the IRS, found at 31 C.F.R. Part 10, were most recently revised on September 26, 2007. The savings clause contained at 31 C.F.R. §10.91 of the revised regulations provides that any proceeding under the part based on conduct engaged in prior to September 26, 2007, which is instituted after that date, shall apply the procedural rules of the revised regulations contained in Subpart D (Rules Applicable to Disciplinary Proceedings) and E (General Provisions). However, "...conduct engaged in prior to September 26, 2007, shall be judged by the regulations in effect at the time the conduct occurred." 31 C.F.R. §10.91 (2007)

On May 13, 2009, the Area Counsel for the Office of the General Counsel filed a Complainant's Motion for a Decision by Default, moving that the Administrative Law Judge grant the relief requested in the complaint and specifically order that the Respondent be disbarred for a minimum of 48 months from further practice before the Internal Revenue Service (IRS) pursuant to the provisions of 31 C.F.R. §§10.50, 10.52, 10.76 and 10.79, issued under the authority of 31 U.S.C. §330, reinstatement thereafter being at the sole discretion of the OPR. The motion is based on the Respondent's failure to file an Answer to the complaint. The regulations provide authority for a decision by default where the practitioner does not timely file an answer, despite her receipt of the complaint, notice of the requirement to answer, and the potential consequence of a default decision. 31 C.F.R. §10.64(d). Where the practitioner fails to file an answer to the complaint within the time prescribed, said failure constitutes a waiver of the right to a hearing and the allegations set forth in the complaint are deemed admitted. 31 C.F.R. §10.64(d). Where the practitioner fails to respond within 30 days of a motion for decision by default for failure to file a timely answer, the nonmoving party is deemed to not oppose the motion. 31 C.F.R. §10.68(b).

Having carefully reviewed the pleadings before me, and noting that the Respondent did not file an answer to the complaint or a response to the Complainant's Motion for a Decision by Default, I find that there are no material issues of fact to be resolved and that a decision on the motion for default judgment is the appropriate way to dispense of this matter. The uncontested facts establish the following:

FINDINGS OF FACT

1. The Respondent has engaged in practice before the Internal Revenue Service, as defined in 31 C.F.R. §10.2(a), as an attorney.
2. The Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Office of Professional Responsibility, in accordance with 31 C.F.R. §§10.3 and 10.50.
3. The Respondent's last known address of record with the Internal Revenue Service is Address 1.
4. At all times relevant to this complaint, the Respondent was involved in the presentation of matters to the Internal Revenue Service concerning matters relating to taxpayers, as defined by 31 C.F.R. §10.2(a)(4).
5. At all time relevant to the complaint, the Respondent received gross income exceeding the minimum amount that would require her to timely file an individual Federal income tax return (IRS Form 1040) on or before the date due for such return.

6. Pursuant to 31 C.F.R. §§10.50 and 10.60, the Secretary of the Treasury, by her delegate, here the Office of Professional Responsibility of the IRS, may take a disciplinary action against any practitioner who is shown, *inter alia*, to be disreputable, or who fails to comply with any regulation in these parts.
7. The Respondent is subject to the regulations governing practice before the IRS by virtue of 31 C.F.R. §10.0 *et seq.*, particularly §§10.50, 10.52 and 10.60, and by virtue of those provisions, is subject to disbarment or suspension from practice before the Internal Revenue Service due to disreputable conduct.
8. The Respondent is subject to disbarment or suspension from practice before the IRS under 31 C.F.R. §§10.50 and 10.52, by reason of the fact that the Respondent has engaged in disreputable conduct, as set forth under 31 C.F.R. §10.51, the circumstances of such conduct are more particularly set forth hereinafter.
9. In compliance with 31 C.F.R. §10.60(c), the Respondent previously has been advised in writing of the law, facts and conduct warranting the issuance of the Complaint, and has been accorded an opportunity to dispute facts, assert additional facts and make arguments.
10. The Respondent was required by 26 U.S.C. §§6011, 6012 and 6072 to timely file her individual Federal income tax return (IRS Form 1040) for tax year 2003.
11. The Respondent failed to timely file her Federal individual income tax return (IRS Form 1040) for tax year 2003.
12. The Respondent was required by 26 U.S.C. §§6011, 6012 and 6072 to timely file her individual Federal income tax return (IRS Form 1040) for tax year 2004.
13. The Respondent failed to timely file said return for tax year 2004.
14. The Respondent was required by 26 U.S.C. §§6011, 6012 and 6072 to timely file her individual Federal income tax return (IRS Form 1040) for tax year 2005.
15. The Respondent failed to timely file said return for tax year 2005.
16. The Respondent was required by 26 U.S.C. §§6011, 6012 and 6072 to timely file her individual Federal income tax return (IRS Form 1040) for tax year 2001. The Respondent's IRS Form 1040 for tax year 2001 was originally due on or before April 15, 2002. The Respondent

17. The Respondent failed to timely file said return for tax year 2001.
18. The Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to timely file her individual Federal income tax return (IRS Form 1040) for tax year 2002. The Respondent's IRS Form 1040 for tax year 2002 was originally due on or before April 15, 2003. The Respondent sought and was granted an extension to file her IRS Form 1040 for tax year 2002 on or before August 15, 2003. The Respondent did not file her IRS Form 1040 for tax year 2002 until June 3, 2005.
19. The Respondent failed to timely file said return for tax year 2002.
20. The Respondent's failure to timely file said tax returns was willful.
21. Such willful failure to timely file said tax returns constitutes disreputable conduct pursuant to 31 C.F.R. §10.51 generally and a willful violation of 10.51(d)(rev. 1994) more particularly, for which the Respondent may be censured, suspended or disbarred from practice before the Internal Revenue Service.

In conclusion, by failing to timely file an answer or response to the motion filed by the Complainant, the Respondent has admitted that she willfully failed to timely file tax returns as alleged in the complaint and motion.

The Respondent is an attorney who has engaged in practice before the Internal Revenue Service. As such, she is subject to the disciplinary authority of the Secretary of the Treasury and the Director or Acting Director of OPR. 31 U.S.C. §330(a)(1). The Respondent was required to file a Federal income tax return for tax years 2001 through 2005. Those returns were due on or before April 15 of the following calendar year, although the Respondent sought and was granted extensions to file her IRS Form 1040 for tax years 2001 and 2002. The Complainant asserts that the tax returns were not timely filed for tax years 2001 and 2002 and not filed for tax years 2003, 2004 and 2005.

Pursuant to 31 C.F.R. §10.50, the Respondent's eligibility to practice before the Internal Revenue Service is subject to suspension or disbarment by reason of engaging in disreputable conduct. Willfully failing to timely file a Federal income tax return in violation of the revenue laws of the United States

constitutes disreputable conduct within the meaning of 31 C.F.R. §10.51(d). As an attorney representing taxpayers before the Internal Revenue Service, the Respondent was aware of her responsibility to timely file individual Income Tax Returns (IRS Form 1040). I find that the Respondent's repeated willful failure to do so for five years constitutes disreputable conduct within the meaning of the regulations.

With regard to the remedy in this matter, the Complainant seeks to have the Respondent disbarred for a minimum of 48 months from further practice before the Internal Revenue Service because of her failure to comply with her Federal income tax obligations from tax years 2001 through 2005. I find the recommendation of OPR concerning the appropriate penalty is entitled to substantial deference. The Respondent, an attorney, was aware of her obligations to timely file her tax returns, but chose not to fulfill her obligations. The allegations against the Respondent are serious in nature and it is important to deter similar conduct by other certified agents. Accordingly, I find that, under all the circumstances, disbarment from practicing before the IRS is appropriate.

ORDER

The Respondent, Jennifer K. Suits, is hereby disbarred from practice before the Internal Revenue Service.²

Dated at Washington, D.C., July 1, 2009.

Susan E. Jelen
Administrative Law Judge

² Pursuant to 31 C.F.R. §10.77, either party may appeal the Decision to the Secretary of the Treasury within thirty (30) days from the date of issuance.